

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2840 (Lopez) – As Introduced February 19, 2016

SUBJECT: Political Reform Act of 1974: travel.

SUMMARY: Prohibits tax-exempt 501(c)(3) nonprofit organizations from making travel payments for Members of the Legislature. Specifically, **this bill:**

- 1) Prohibits a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code from providing any payment, advance, or reimbursement for travel, including actual transportation and related lodging and subsistence, to a Member of the Legislature.
- 2) Prohibits a Member of the Legislature from accepting payments, advances, or reimbursements from nonprofit organizations that are prohibited as provided above.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Prohibits specified elected officers and other public officials from receiving gifts, as defined, in excess of \$460 in value from a single source in a calendar year. Provides that payments for travel that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not subject to the gift limit if either of the following is true:
 - a) The travel is in connection with a speech given by the official and the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States; or,
 - b) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
- 3) Prohibits a lobbyist or lobbying firm from making gifts aggregating more than \$10 in a calendar month to a candidate for elective state office, an elected state officer, or a legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist. Prohibits an official from knowingly receiving a gift that is unlawful under this provision.
- 4) Requires candidates for, and current holders of, specified elected or appointed state and local offices and designated employees of state and local agencies to file statements of economic

interests (SEIs) disclosing their financial interests, including investments, real property interests, and income, including gifts.

- 5) Requires certain tax-exempt 501(c)(3) and 501(c)(4) nonprofit organizations that make travel payments for elected officials to file a report with the FPPC that discloses the names of donors to the organization that meet specified criteria.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

In recent years public distrust in government has increasingly grown particularly due to the amount of influence that special interest groups have over policy makers.

One technique that special interest groups have utilized to secure their influence with law makers has been by taking them on trips commonly known as "junkets". A "junket" is when a non-profit fully pays for a trip for an elected official that includes travel, lodging, meals, and other associated expenses. During these trips elected officials are educated on issues and topics that pertain to their jurisdictions.

Current law requires a nonprofit organization that makes travel payments of \$5,000 or more for an elected official or \$10,000 or more for more than one elected official to disclose the names of donors who donated \$1,000 or more and also went on the trip(s). The law also requires the elected official attending to disclose the destination of the trip.

According to a recent article by the Sacramento Bee members of the California legislature accepted travel and associated expenses by non-profits and foreign governments that were valued at \$612,000 in 2015 alone.

Unfortunately special interest groups have hidden behind non-profits they have created in order to take legislators away to luxurious destinations to educate them on the issues facing Californians. Simple disclosure of such trips still allows for such groups to have greater influence with elected officials.

- 2) **Gifts of Travel:** When the PRA was enacted in 1974, it did not include a general limit on the value of gifts that could be received by public officials, though it did include the \$10 lobbyist gift limit. In 1988, the voters approved Proposition 73, which prohibited elected officeholders from accepting any gift exceeding \$1,000 in value in a calendar year from a single source, among other provisions. SB 1738 (Roberti), Chapter 84, Statutes of 1990, subsequently lowered the gift limit to \$250 for elected state officials, and made the same \$250 gift limit applicable to members of state boards and commissions and to designated employees of state agencies, among other provisions (though the gift limit remained at

\$1,000 for local elected officeholders until the passage of SB 701 (Craven), Chapter 690, Statutes of 1995). SB 1738 also required the FPPC to adjust the gift limit every two years to reflect inflation. Based on those adjustments, the gift limit has risen to \$460. The \$1,000 gift limit in Proposition 73 and the \$250 gift limit in SB 1738 both included exceptions for reimbursements of certain travel expenses.

Travel payments received by public officials generally are considered to be reportable gifts or income under the PRA, with certain exceptions. If a travel payment is a gift, it is also normally subject to the \$460 gift limit and \$10 lobbyist gift limit, though certain exceptions apply.

Payments for travel (including lodging and subsistence) that are related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are considered gifts but are not subject to the \$460 gift limit if the travel is: (1) in connection with a speech given by the official and any lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States, or (2) provided by a government agency or authority, a bona fide public or private educational institution, as specified, or a nonprofit organization pursuant to Section 501(c)(3) of the Internal Revenue Code or a similar foreign organization. Although these payments are not subject to the \$460 gift limit, they must be reported on an official's SEI, and the travel payments can create a conflict of interest for the official.

Payments made for travel for leisure or recreational purposes are not exempt from the gift limit; instead, the exception to the gift limits applies only for travel that is "reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy," and only if certain other conditions are met. Exempting certain travel payments from the gift limits may give public officials the opportunity to become better educated on public policy issues through travel that those officials otherwise would be unable to afford, or that otherwise would need to be paid for with public funds.

Among the travel payments received by members of the Legislature in 2015 that were made by 501(c)(3) nonprofit organizations were payments for travel to conferences and training sessions put on by the National Conference of State Legislatures, the Council of State Governments, and the State Legislative Leaders Foundation; travel and lodging in connection with a conference held in California on the state's drought; lodging in connection with the Latino Legislative Caucus' annual policy retreat; and travel and lodging in connection with the United Nations Climate Convention in France. All of those travel payments would be illegal under this bill.

In fact, this bill would prohibit 501(c)(3) nonprofit organizations from making payments of *any amount* in connection with travel by members of the Legislature. It would be illegal, for instance, for a 501(c)(3) nonprofit organization to pay for a \$30 train ticket for a member of the Legislature to attend and speak at their annual conference in California, or to pay for a hotel room for one night for a legislator who spoke at that conference. Even if those gifts of travel are well below the \$460 gift limit, they would be illegal under the provisions of this bill. On the other hand, it would continue to be legal for a 501(c)(3) nonprofit organization to make gifts of up to \$460 in a calendar year to a member of the Legislature as long as those

gifts are not related to travel.

If there is concern that travel being funded by nonprofit organizations has been primarily for leisure purposes and is not serving the purpose of educating members about issues of public policy and assisting those members in the performance of their duties, perhaps it would be more appropriate to revisit the standards that are used to determine whether travel is sufficiently related to public policy issues.

It should also be noted that this bill would not necessarily limit certain trips that have been prominently covered by the media and that have been criticized by the author of this bill. For example, in a press release announcing the introduction of this bill, the author is quoted as saying that she "do[es] not agree with the current loophole that allows nonprofits to pay for travel to places like Maui so legislators can 'relax' with lobbyists." This appears to be a reference to an annual conference in Maui which various members of the Legislature have attended. While that conference is sponsored by a nonprofit organization, and that organization has made travel payments for members of the Legislature to attend the conference, the sponsoring organization is *not* organized pursuant to Section 501(c)(3) of the Internal Revenue Code, but instead is organized pursuant to Section 501(c)(4). The travel payments made by that organization for members of the Legislature to attend the conference appear to be exempt from the gift limits not because of the nonprofit status of the organization, but because attendees at the conference generally make speeches or participate in panels at the conference, and the travel is within the United States.

- 3) **Recent Legislation:** Last year, the Legislature enacted and the Governor signed SB 21 (Hill), Chapter 757, Statutes of 2015, which required specified nonprofit organizations that make payments for travel by public officials to disclose the names of certain donors, among other provisions. According to the author, SB 21 was an attempt to "increase[] transparency within the [PRA] by requiring non-profits that pay for elected official travel to disclose to the FPPC the names of the donors responsible for funding the travel."
- 4) **Any Public Official May Choose to Decline Gifts:** No public official is compelled to accept gifts. To the extent that a public official is concerned that the acceptance of a gift of travel may result in public distrust, that official is free to decline any or all gifts. In fact, a number of members of the Legislature have chosen not to accept gifts of any kind or value.
- 5) **Limited to Legislators:** This bill only prohibits specified travel payments to Members of the Legislature; it does not restrict such payments made for other public officials or employees. The reason for this distinction is unclear. If, as the author contends, special interest groups are paying for junkets in an attempt to influence public officials, and if this bill is the appropriate way to protect against any inappropriate influence, the committee may wish to consider whether this bill should also apply to public officials other than members of the Legislature.

- 6) **Arguments in Support:** In support of this bill, the Howard Jarvis Taxpayers Association writes:

For years this Association has criticized the multiple trips legislators take annually to far-flung places across the globe, including to Australia this year. We certainly don't dispute that valuable knowledge is shared and connections are made, and we are thankful that taxpayers don't fund any of these so-called junkets. But that misses the point regarding why these average California citizens are angered by this practice. According to a recent study done by the Social Security Administration, 50% of all American workers in 2014 made less than \$30,000, an amount just above the federal poverty line for a family of five. Why should legislators, solely by virtue of holding public office, be able to go on an all-expenses paid trip when half the country likely cannot afford it?

- 7) **Political Reform Act of 1974:** California voters passed an initiative Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

Howard Jarvis Taxpayers Association
Sierra Club California
The Utility Reform Network (TURN)

Opposition

None on file.

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